

UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

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Lani Polkowski

Plaintiff,

Civil Action

v.

No: 3:17-CV-107

Target Corporation, Bottling Group, LLC,  
Bottling Group, LLC d/b/a Pepsi Beverages  
Company and PepsiCo Bottling Group, LLC:  
Defendants.

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**REQUEST TO ATTACH EXHIBIT**

TO THE CLERK OF COURT:

Kindly attach the following exhibit to Defendants' Notice of Removal which was filed with the Court on January 19, 2017.

DUGAN, BRINKMANN, MAGINNIS AND PACE

/s/ Mark C. Cavanaugh

Mark C. Cavanaugh, Esquire

Attorney for Defendants

1880 John F. Kennedy Boulevard, 14<sup>th</sup> Fl.

Philadelphia, PA 19103

215-563-3500

Fax – 215-563-5610

Email: [mccavanaugh@dbmplaw.com](mailto:mccavanaugh@dbmplaw.com)

**CERTIFICATE OF SERVICE**

Mark C. Cavanaugh, Esquire, hereby certifies that he served a copy of the foregoing  
Request to Attach Exhibit upon all counsel of record on this 20th day of January, 2017.

Bruce S. Zero, Esquire  
Powell Law  
527 Linden Street  
Scranton, PA 18503

Daniel D. Krebbs, Esquire  
Marshall, Dennehey, Warner, Coleman & Goggin  
2000 Market St., Suite 2300  
Philadelphia, PA 19103

DUGAN, BRINKMANN, MAGINNIS AND PACE

/s/ Mark C. Cavanaugh  
Mark C. Cavanaugh, Esquire  
Attorney for Defendants  
1880 John F. Kennedy Boulevard, 14<sup>th</sup> Fl.  
Philadelphia, PA 19103  
215-563-3500  
Fax – 215-563-5610  
Email: [mccavanaugh@dbmplaw.com](mailto:mccavanaugh@dbmplaw.com)

# **EXHIBIT “A”**

JAN 4 REC'D

## Supreme Court of Pennsylvania

Court of Common Pleas  
Civil Cover Sheet

Lackawanna

County



For Prothonotary Use Only:

Docket No:

16CV6908

TIME STAMP

The information collected on this form is used solely for court administration purposes. This form does not supplement or replace the filing and service of pleadings or other papers as required by law or rules of court.

SECTION A  
Commencement of Action:

- ☒ Complaint      ☐ Writ of Summons      ☐ Petition  
☐ Transfer from Another Jurisdiction      ☐ Declaration of Taking

Lead Plaintiff's Name:  
Lani PolkowskiLead Defendant's Name:  
Target CorporationAre money damages requested? ☒ Yes ☐ NoDollar Amount Requested: ☐ within arbitration limits  
(check one) ☒ outside arbitration limitsIs this a Class Action Suit? ☐ Yes ☒ NoIs this an MDJ Appeal? ☐ Yes ☒ No

Name of Plaintiff/Appellant's Attorney: Bruce S. Zero, Esquire

☐ Check here if you have no attorney (are a Self-Represented [Pro Se] Litigant)

**Nature of the Case:** Place an "X" to the left of the **ONE** case category that most accurately describes your **PRIMARY CASE**. If you are making more than one type of claim, check the one that you consider most important.

SECTION B  
**TORT** (do not include Mass Tort)

- ☐ Intentional  
☐ Malicious Prosecution  
☐ Motor Vehicle  
☐ Nuisance  
☒ Premises Liability  
☐ Product Liability (does not include mass tort)  
☐ Slander/Libel/Defamation  
☐ Other:

**MASS TORT**

- ☐ Asbestos  
☐ Tobacco  
☐ Toxic Tort - DES  
☐ Toxic Tort - Implant  
☐ Toxic Waste  
☐ Other:

**PROFESSIONAL LIABILITY**

- ☐ Dental  
☐ Legal  
☐ Medical  
☐ Other Professional:

**CONTRACT** (do not include Judgments)

- ☐ Buyer Plaintiff  
☐ Debt Collection: Credit Card  
☐ Debt Collection: Other

- ☐ Employment Dispute:  
 Discrimination  
☐ Employment Dispute: Other

☐ Other:**REAL PROPERTY**

- ☐ Ejectment  
☐ Eminent Domain/Condemnation  
☐ Ground Rent  
☐ Landlord/Tenant Dispute  
☐ Mortgage Foreclosure: Residential  
☐ Mortgage Foreclosure: Commercial  
☐ Partition  
☐ Quiet Title  
☐ Other:

**CIVIL APPEALS**

- ☐ Administrative Agencies  
☐ Board of Assessment  
☐ Board of Elections  
☐ Dept. of Transportation  
☐ Statutory Appeal: Other

☐ Zoning Board☐ Other:**MISCELLANEOUS**

- ☐ Common Law/Statutory Arbitration  
☐ Declaratory Judgment  
☐ Mandamus  
☐ Non-Domestic Relations  
☐ Restraining Order  
☐ Quo Warranto  
☐ Replevin  
☐ Other:

Updated 1/1/2011


You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by an Attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you and a Judgment may be entered against you by the Court without further notice for any money claimed in this Complaint, of for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

NORTHERN PENNSYLVANIA LEGAL  
SERVICES, INC.  
33 North Main Street  
Suite 200  
Pittston, PA 18640  
(570) 299-4100

LAWYER REFERRAL SERVICE  
LACKAWANNA BAR ASSOCIATION  
204 Wyoming Avenue, Suite 205  
Scranton, PA 18503-1410  
(570) 969-9600

  
\_\_\_\_\_  
BRUCE S. ZERO, ESQUIRE  
ATTORNEY FOR PLAINTIFF

NOW COMES the Plaintiff, LANI POLKOWSKI, by her attorneys, POWELL LAW,  
527 Linden Street, Scranton, Pennsylvania 18503, and brings thsi action against the Defendants,  
TARGET CORPORATION, BOTTLING GROUP, LLC, BOTTLING GROUP, LCC d/b/a  
PEPSI BEVERAGES COMPANY and PEPSICO BOTTLING GROUP, LLC, upon the causes

of action, whereof the following is a statement:

1. Plaintiff, LANI POLKOWSKI, is an adult individual who resides at 210 Prospect Street, Dunmore, Lackawanna County, Pennsylvania.
2. Defendant, TARGET CORPORATION, is a Minnesota Corporation, licensed to transact business in the State of Pennsylvania, with a local place of business located at 1140 Commerce Boulevard, Dickson City, Lackawanna County, Pennsylvania 18519.
3. Defendant, BOTTLING GROUP, LLC, is a New York Limited Liability Corporation , licensed to transact business in the State of Pennsylvania, with a principal place of business located at One Pepsi Way, Somers, New York 10589.
3. Defendant, BOTTLING GROUP, LLC, d/b/a PEPSI BEVERAGES COMPANY, is a business entity, licensed to transact business in the State of Pennsylvania, with a principal place of business located at One Pepsi Way, Somers, New York 10589.
4. Defendant, PEPSICO BOTTLING GROUP, LLC, is a New York Limited Liability Corporation, licensed to transact business in the State of Pennsylvania, with a principal place of business located at One Pepsi Way, Somers, New York 10589.
5. At all times mentioned and for some time prior thereto, the Defendant, TARGET CORPORATION, was and still is the owner and/or in control of a premises located at 1140 Commerce Boulevard, Dickson City, Lackawanna County, Pennsylvania 18519.
6. At all times herein mentioned and for some time prior thereto, the Defendant, TARGET CORPORATION, by and through its agents, servants, workmen or employees, had under its control, the supervision and maintenance of said premises located at 1140 Commerce Boulevard, Dickson City, Lackawanna County, Pennsylvania 18519.
7. At all times mentioned and for some time prior thereto, the Defendants, BOTTLING



GROUP, LLC, BOTTLING GROUP, LLC, d/b/a PEPSI BEVERAGES COMPANY, and PEPSICO BOTTLING GROUP, LLC, were responsible for stocking Pepsi products on the premises of Target located at 1140 Commerce Boulevard, Dickson City, Lackawanna County, Pennsylvania.

8. At all times herein mentioned and for some time prior thereto, the Defendants, BOTTLING GROUP, LLC, BOTTLING GROUP, LLC, d/b/a PEPSI BEVERAGES COMPANY, and PEPSICO BOTTLING GROUP, LLC, by and through their agents, servants, workmen or employees, were responsible for stocking Pepsi products on the premises of Target located at 1140 Commerce Boulevard, Dickson City, Lackawanna County, Pennsylvania.

9. On or about the 19<sup>th</sup> day of April, 2015, the Plaintiff, LANI POLKOWSKI, was lawfully on the premises owned and/or in control of the Defendant, TARGET CORPORATION, for the purposes of availing herself to goods and services sold therein when an entire row of 12 packs of Pepsi products fell on top of Plaintiff striking her in the back and legs. The row of Pepsi products was stacked by agents, servants and employees of Defendants, TARGET CORPORATION and/or Defendant BOTTLING GROUP, LLC, BOTTLING GROUP, LLC, d/b/a/ PEPSI BEVERAGES COMPANY and PEPSICO BOTTLING GROUP, LLC.

### **COUNT I**

**Lani Polkowski, Plaintiff**

**vs.**

**Target Corporation, Defendant**

10. Plaintiff, LANI POLKOWSKI, incorporates by reference, the allegations contained in Paragraphs One (1) through Nine (9), inclusive, as fully as though the same were here set forth at length.

11. At the time of the aforesaid incident, the carelessness and negligence of the

Defendant, TARGET CORPORATION, by and through its agents, servants, workmen and/or employees, consisted of the following:

- a. The Defendant did, on the above-mentioned date and for some time prior thereto, carelessly and negligently allow 12 packs of Pepsi products to be stacked in a manner which caused a hazard on the premises located at 1140 Commerce Boulevard, Dickson City, Lackawanna County, Pennsylvania;
- b. The Defendant was negligent in maintaining and supervising the condition of said premises by allowing negligently stacked 12 packs of Pepsi products to remain on the premises located at 1140 Commerce Boulevard, Dickson City, Lackawanna County, Pennsylvania;
- c. The Defendant should have given notice to the general public, and more particularly the Plaintiff, LANI POLKOWSKI, of the existence of the negligently stacked 12 packs of Pepsi products and/or the otherwise defective condition of the above-mentioned premises prior to the happening of the said incident;
- d. The Defendant was negligent in failing to correct the defective condition of the above-described premises located at 1140 Commerce Boulevard, Dickson City, Lackawanna County, Pennsylvania;
- e. The Defendant was negligent in failing to place barricades in the area of the 12 packs of Pepsi products located on the above-described premises and/or the area of the otherwise defective condition of the above-described premises, so that the general public, and more particularly, the Plaintiff,

LANI POLKOWSKI, would not be able to walk in that area;

- f. The Defendant was negligent in supervising its employees;
- g. The Defendant was negligent in conducting stocking operations; and
- h. The Defendant otherwise failed to exercise due care under the circumstances.

12. All of the above-mentioned negligence and condition existed for a time prior to the incident which occurred on the 19<sup>th</sup> day of April, 2015, therefore, the Defendant had actual and/or constructive notice of the said condition prior to the aforementioned accident.

13. The Plaintiff, LANI POLKOWSKI, avers that prior to this occurrence, the Defendant, TARGET CORPORATION, had notice of knowledge of the existence of the said negligently stacked 12 packs of Pepsi products on the above-described premises, which constituted a dangerous condition, a public nuisance, and made it dangerous to the Plaintiff and other person to travel upon the above-mentioned premises.

14. As a result of the aforementioned negligence of the Defendant, TARGET CORPORATION, the Plaintiff, LANI POLKOWSKI, sustained severe and permanent injuries, including, but not limited to, injuries to her thoracic and lumbar spine and legs, coupled with severe and permanent shock to her nerves and nervous system, by reason of which she was rendered sick, sore, lame, prostrate and disordered and was made to undergo great mental anguish and physical pain as a result of which she has suffered, yet suffers and will continue to suffer in the future, since these injuries are permanent in nature.

15. As a result of the aforementioned negligence of the Defendant, TARGET CORPORATION, the Plaintiff, LANI POLKOWSKI, has been compelled to pay, lay out and expend various sums of money for medicine and medical attention in and about endeavoring to

treat and cure herself of her injuries and will be obligated to make similar expenditures for an indefinite period of time in the future, since these injuries are permanent in nature.

16. As a result of the aforementioned negligence of the Defendant, TARGET CORPORATION, the Plaintiff, LANI POLKOWSKI, has sustained a loss of her future earning capacity and/or economic horizons.

WHEREFORE, Plaintiff, LANI POLKOWSKI, claims damages from the Defendant, TARGET CORPORATION, in an amount upon Count I of the foregoing Cause of Action, in excess of Fifty Thousand (\$50,000.00) Dollars.

## **COUNT II**

**Lani Polkowski, Plaintiff**  
**vs.**  
**Bottling Group, LLC**  
**Bottling Group, LLC, d/b/a Pepsi**  
**Beverages Company, and**  
**Pepsico Bottling Group, LLC, Defendants**

17. Plaintiff, LANI POLKOWSKI, incorporates by reference, the allegations contained in Paragraphs One (1) through Sixteen (16), inclusive, as fully as though the same were here set forth at length.

18. At the time of the aforesaid incident, the carelessness and negligence of the Defendants, BOTTLING GROUP, LLC, d/b/a PEPSI BEVERAGES COMPANY, and PEPSICO BOTTLING GROUP, LLC, by and through their agents, servants, workmen and/or employees, consisted of the following:

- a. The Defendants did, on the above-mentioned date and for some time prior thereto, carelessly and negligently stock and allow 12 packs of Pepsi products to be stacked in a manner which caused a hazard on the premises located at 1140 Commerce Boulevard, Dickson City, Lackawanna County,

Pennsylvania;

- b. The Defendants were negligent in maintaining and supervising the condition of said premises by allowing negligently stacked 12 packs of Pepsi products to remain on the premises located at 1140 Commerce Boulevard, Dickson City, Lackawanna County, Pennsylvania;
- c. The Defendants should have given notice to the general public, and more particularly the Plaintiff, LANI POLKOWSKI, of the existence of the negligently stacked 12 packs of Pepsi products and/or the otherwise defective condition of the above-mentioned premises prior to the happening of the said incident;
- d. The Defendants were negligent in failing to correct the defective condition of the above-described premises located at 1140 Commerce Boulevard, Dickson City, Lackawanna County, Pennsylvania;
- e. The Defendants were negligent in failing to place barricades in the area of the 12 packs of Pepsi products located on the above-described premises and/or the area of the otherwise defective condition of the above-described premises, so that the general public, and more particularly, the Plaintiff, LANI POLKOWSKI, would not be able to walk in that area;
- f. The Defendants were negligent in supervising its employees;
- g. The Defendants were negligent in conducting stocking operations; and
- h. The Defendants otherwise failed to exercise due care under the circumstances.

19. All of the above-mentioned negligence and condition existed for a time prior to the

incident which occurred on the 19<sup>th</sup> day of April, 2015, therefore, the Defendants had actual and/or constructive notice of the said condition prior to the aforementioned accident.

20. The Plaintiff, LANI POLKOWSKI, avers that prior to this occurrence, the Defendants, had notice of knowledge of the existence of the said negligently stacked 12 packs of Pepsi products on the above-described premises, which constituted a dangerous condition, a public nuisance, and made it dangerous to the Plaintiff and other person to travel upon the above-mentioned premises.

21. As a result of the aforementioned negligence of the Defendants, BOTTLING GROUP, LLC, d/b/a PEPSI BEVERAGES COMPANY, and PEPSICO BOTTLING GROUP, LLC, the Plaintiff, LANI POLKOWSKI, sustained severe and permanent injuries, including, but not limited to, injuries to her thoracic and lumbar spine and legs, coupled with severe and permanent shock to her nerves and nervous system, by reason of which she was rendered sick, sore, lame, prostrate and disordered and was made to undergo great mental anguish and physical pain as a result of which she has suffered, yet suffers and will continue to suffer in the future, since these injuries are permanent in nature.


22. As a result of the aforementioned negligence of the Defendants, BOTTLING GROUP, LLC, d/b/a PEPSI BEVERAGES COMPANY, and PEPSICO BOTTLING GROUP, LLC, the Plaintiff, LANI POLKOWSKI, has been compelled to pay, lay out and expend various sums of money for medicine and medical attention in and about endeavoring to treat and cure herself of her injuries and will be obligated to make similar expenditures for an indefinite period of time in the future, since these injuries are permanent in nature.

23. As a result of the aforementioned negligence of the Defendants, BOTTLING GROUP, LLC, d/b/a PEPSI BEVERAGES COMPANY, and PEPSICO BOTTLING GROUP,

LLC, the Plaintiff, LANI POLKOWSKI, has sustained a loss of her future earning capacity and/or economic horizons.

WHEREFORE, Plaintiff, LANI POLKOWSKI, claims damages from the Defendants, BOTTLING GROUP, LLC, d/b/a PEPSI BEVERAGES COMPANY, and PEPSICO BOTTLING GROUP, LLC, in an amount upon Count II of the foregoing Cause of Action, in excess of Fifty Thousand (\$50,000.00) Dollars.

**POWELL LAW**

  
\_\_\_\_\_  
Bruce S. Zero, Esquire

ATTORNEY FOR PLAINTIFF

527 Linden Street  
Scranton, Pennsylvania 18503

(570) 961-0777

VERIFICATION

LANI POLKOWSKI, hereby certifies that the facts set forth in the foregoing document are true and correct to the best of his knowledge, information and belief.

This statement and verification is made subject to the penalties of 18 Pa. C.S.A. Section 4904, relating to unsworn falsification to authorities, which provides that if I make knowingly false averments, I may be subject to criminal penalties.

  
\_\_\_\_\_  
LANI POLKOWSKI

DATED:

12/13/16